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BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			JABR, FADEY S	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/608,876  
Filing Date: June 27, 2003  
Appellant(s): DALE, JONATHAN

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Kurt M. Pankratz  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 16 March 2009 appealing from the Office action mailed 15 September 2008.

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**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2008/0010105 A1	ROSE et al.	1-10-2008
2006/0287897 A1	SOBALVARRO et al.	12-2006

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims **11-20** are rejected under 35 U.S.C. 101 because computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs, are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See MPEP § 2106 (a). In the present case, an *interface* and an *agent* are considered to be software and are therefore deemed to be non-statutory. Applicant argues that “an interface and an agent” as recited in claims 11-20 are not limited to software. Applicant points to pages 8 and 10 of the specification to overcome the rejection. However, Examiner notes that the support pointed to within the specification, “interface 42 may include any suitable combination of hardware and/or logic for interacting with other components”, and, “exemplary functional elements for an agent 40...include an interface 42, a description 44, a knowledge base 46, a plan 48, and a plan processing engine 50”, are not sufficient to overcome the rejection. For instance,

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the support pointed to for the interface states that an interface may include hardware and/or logic, therefore hardware is not necessarily included. Further, the support pointed to for an agent includes many components which are considered to be software including the interface. Thus, the claims are deemed to be non-statutory.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims **1-31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose et al., Pub. No. US2008/0010105 A1 in view of Sobalvarro et al., Pub. No. US2006/0287897 A1, hereinafter referred to as Rose and Sobalvarro, respectively.

As per **Claims 1, 5-6, 9-11, 15-16, 19-21, 25-26 and 29-31**, Rose discloses a method and system comprising:

- identifying a template specifying a plurality of events (see Figure 5A);
- determining a plurality of consumer descriptors (see Figure 6A);
- accessing a remote service directory having service descriptors for each of a plurality of services (0010, 0051-0052, 0055);

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- filtering the services from the service directory based on the service descriptors, the events, and the consumer descriptors to determine potential ones of the services for fulfilling the events (see Figures 6A, 7);
- querying each of the potential services for additional service descriptors (see Figures 7-9A);
- filtering the potential services based on the additional service descriptors, the events, and the consumer descriptors to determine selected ones of the services for fulfilling the events (see Figures 7-9A);
- identifying service links for accessing the selected services (0059);

Rose fails to disclose modifying the template to associate the service links with the events; determining whether each of the events in the template has an associated service link; and when each of the events in the template has an associated service link, presenting the template for acceptance. Rose does disclose a customer accepting a reservation at an available time-slot (0075).

However, Sobalvarro teaches an itinerary for a short weekend with a hypertext link. Sobalvarro also teaches a package for flight, car rental, dinner reservations and show tickets with hypertext links to each of the services for the event, and allowing the user to purchase the itinerary (see Figures 2E-2F). Further Sobalvarro teaches a number of package offerings with round trip air fare, hotel accommodations, car rental and show tickets (0100, 0107, also see Figure 2D, 3B, 10). Thus, Rose disclose providing itinerary information to customers while Sobalvarro teaches providing links to further provide information relating to the itinerary for the customer.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Rose and include modifying a template to incorporate links to the events and service links as taught by Sobalvarro since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per **Claims 2, 12 and 22**, Rose discloses wherein for each of the potential services, the additional service descriptors comprise a plurality of interface descriptors each identifying a feature of the potential service and a format for interfacing with the feature (see Figure 8).

As per **Claims 3, 13 and 23**, Rose discloses wherein each of the service links points to a particular feature of the identified service and specifies a command for accessing the particular feature (see Figure 8).

As per **Claims 4, 14 and 24**, Rose discloses wherein the consumer descriptors include global descriptors applicable across multiple templates and dynamic descriptors specifying constraints for one or more of the events (see Figure 6A).

As per **Claims 7, 17 and 27**, Rose discloses communicating payment information to at least one of the selected services (see Figure 12).

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As per **Claims 8, 18 and 28**, Rose discloses wherein the template comprises a text based file (see Figure 6A).

### **(10) Response to Argument**

#### **First Issue**

Appellant argues that “an interface and an agent” as recited in claims 11-20 are not limited to software. Applicant points to pages 8 and 10 of the specification to overcome the rejection. However, Examiner notes that the support pointed to within the specification, “interface 42 may include any suitable combination of hardware and/or logic for interacting with other components”, and, “exemplary functional elements for an agent 40...include an interface 42, a description 44, a knowledge base 46, a plan 48, and a plan processing engine 50”, are not sufficient to overcome the rejection. For instance, the support pointed to for the interface states that an interface may include hardware and/or logic, therefore hardware is not necessarily included. Further, the support pointed to for an agent includes many components which are considered to be software including the interface. Thus, the claims are deemed to be non-statutory.

#### **Second Issue**

Appellant argues that the combination of Rose and Sobalvarro fail to disclose or teach *identifying a template specifying a plurality of events; and modifying the template to associate the service links with the events*. However, Examiner notes that Rose discloses a template specifying a plurality of events; e.g. eCuisine, eBanquet, eB&B, etc. (Fig. 5A). Further, Fig. 6A discloses a restaurant search template which allows for a finer search of services and events. In



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the broadest reasonable interpretation, identifying a template specifying a plurality of events, is merely displaying a webpage disclosing several types of events, as disclosed by Rose. Further, Sobalvarro teaches each of the package displays includes a one-line description along with a hypertext link, which the consumer may select to learn more about the proposed package...This more descriptive display outlines the various components within the package, including transportation, hotel, car rental, restaurant, entertainment and/or other components of the package and may give consumer the option of requesting **upgrades** and/or **adding on optional components** (abstract, 0100). Thus, Sobalvarro teaches adding links to packages, wherein the packages are dynamic packages.

### Third Issue

Examiner notes that the combination of references would have been obvious to one of ordinary skill in the art at the time of the Appellant's invention. Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994) (The invention was directed to an epoxy impregnated fiber-reinforced printed circuit material. The applied prior art reference taught a printed circuit material similar to that of the claims but impregnated with polyester-imide resin instead of epoxy. The reference, however, disclosed that epoxy was known for this use, but that epoxy impregnated circuit boards have "relatively acceptable dimensional stability" and "some degree

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of flexibility," but are inferior to circuit boards impregnated with polyester-imide resins. The court upheld the rejection concluding that applicant's argument that the reference teaches away from using epoxy was insufficient to overcome the rejection since "Gurley asserted no discovery beyond what was known in the art." 27 F.3d at 554, 31 USPQ2d at 1132.). Furthermore, "[t]he **prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed....**" *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

In the instant case Rose discloses an apparatus and method for an internet based computer reservation booking system, while Sobalvarro teaches grouping and selling products and services (travel related services". Including Sobalvarro's teaching that each of the package displays includes a one-line description along with a hypertext link, which the consumer may select to learn more about the proposed package...This more descriptive display outlines the various components within the package, including transportation, hotel, car rental, restaurant, entertainment and/or other components of the package and may give consumer the option of requesting **upgrades** and/or **adding on optional components** (abstract, 0100) would only add benefit to the system of Rose seeing as the links would provide additional information and services to the requesting customer.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Fadey S. Jabr

/F. S. J./

Examiner, Art Unit 3628

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